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REMARKS

Claims 1-20 are presently pending in the Application and in the Office Action of September 20, 2004 the Examiner had indicated that claim 20 was allowed and that claims 11, 12 and 15 would be allowable if rewritten in independent form including all recitations of the base claim and any intervening claim.

In the present Office Action of March 22, 2005, however, the Examiner has withdrawn the allowability of claims 20, 11, 12 and 15 over a reference newly discovered by the Examiner, U.S. Patent No. 5,622,004 to Gidge for SELF-WATERING GROWING SYSTEMS, hereafter referred to as "Gidge '004", which was cited to the Examiner by the Applicant in the Information Disclosure Statement submitted on February 19, 2004 and which was considered by the Examiner on September 2, 2004.

In particular, the Examiner has rejected claims 1-6, 8-18 and 20 under 35 U.S.C. § 102(b) as being anticipated by Gidge '004 and has rejected claims 7 and 19 under 35 U.S.C. § 103(a) over Gidge '004. The Applicant acknowledges and respectfully traverses the raised anticipatory and obviousness rejections in view of the following remarks.

First considering the rejection of claims 1-6, 8-18 and 20 over Gidge '004 under 35 U.S.C. § 102, claims 1, 11, 14 and 20 are independent claims reciting primary aspects and features of the present invention while claims 2-6, 8-10, 12, 13, and 15-17 are dependent claims adding further limitations to the recitations of claims 1, 11, 14 and 20.

Claim 1 recites a stackable unit for automatically dispensing fluid to at least one growing medium container associated with the stackable unit wherein the stackable unit includes at least one growing medium container and a reservoir having an open top to facilitate the filling of the reservoir.

According to claim 1, the reservoir also has at least one lateral dispensing opening for dispensing fluid from the reservoir and into growing medium in the at least one growing medium container. The lateral dispensing opening is located adjacent to a bottom wall of the reservoir and supports a capillary member which controls the flow of fluid to the at least one growing

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medium container to thereby provide moisture thereto to facilitate the growing of a plant in the planting medium. According to the recitations of claim 1, the dispensing opening and the capillary member are located so that the fluid flows substantially horizontally and radially through the capillary member from the reservoir to the at least one growing medium container.

Further according to claim 1, the reservoir has a drainage channel communicating with the reservoir wherein the drainage channel has an inlet located adjacent the open top of the reservoir to facilitate draining of excess fluid from the reservoir.

Claims 11 and 14 include recitations generally similar to those of claim 1, but claim 11 adds the further recitation that "when a volume of fluid enters the reservoir of a top most stackable unit, the fluid will overflow through the drainage channel of the top most stackable unit and into the reservoir of an adjacent lower stackable unit" while claim 14 is directed to "a kit of parts comprising a plurality of stackable units" rather than "a stackable unit". Claim 20, in turn, is similar to claim 1 but recites the present invention as a method rather than as an apparatus as in claims 1-19.

Next considering the teachings of Gidge '004, Gidge '004 is primary directed to the details of the construction of a wick usable in self-watering containers, but does include descriptions of self-watering containers. As described by Gidge '004 in Figs 14-16 and in the corresponding portions of the specification, a self-watering container arrangement may be made of a stack of self-watering containers 3 wherein each container 3 has a lower portion forming a reservoir for a liquid 8 and an upper portion having walls having a number of inward indentations or pockets 16 for holding side containers 2 wherein each side container 2 can contain a growing medium 5 for plants.

First considering the reservoirs and self-watering mechanism in Gidge '004, according to Gidge '004, and as clearly shown in Figs. 14-16, the bottom of each side container 2, and thereby the lowest part of the medium 5 contained therein, is above the top of the liquid 8 contained in the reservoir of the container 3 to which the side containers 2 are attached. The liquid 8 in the reservoir is transported upward from the reservoir and to the

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bottoms of the side containers 2 and the medium 5 therein by wicks 8. As shown in Figs. 14-16 and as described in the Gidge '004 specification, each side container 2 is provided with a wick 8 extending from the bottom of the reservoir, that is, the bottom of the lower portion of the container 3, and to and through matching openings 16A and 2A in the bottom of the side container 2 and in the bottom of the pocket 16.

It is, therefore, apparent that there are a number of fundamental differences between the present invention as recited in claims 1, 11, 14 and 20 and the teachings of Gidge '004. For example, in Gidge '004 the entire reservoir, including the topmost level of the liquid in the reservoir, must be located below the lowest part of the side containers and the growing medium therein in order to insure the correct flow of liquid to the growing medium; that is, the liquid must be transported to the growing medium solely through the wicks.

In the present invention as recited in claims 1, 11, 14 and 20, and in complete and fundamental contrast from the teachings of Gidge '004, the fluid from the reservoir flows substantially horizontally and radially through a capillary member extending horizontally from a lateral dispensing opening located adjacent to the bottom wall of the reservoir and into the growing medium containers. For this reason, the reservoir is located on essentially the same level as the growing medium containers, that is, in the upper part of the stackable container, rather than in the lower part as in Gidge '004.

As recited in claims 1, 11, 14 and 20, therefore, the reservoir is not only located in the upper part of the stackable container, but has at least one lateral dispensing opening for dispensing fluid from the reservoir and into growing medium. As recited in the claims, the lateral dispensing opening is located adjacent to a bottom wall of the reservoir and the capillary member, through which the liquid flows, extends essentially horizontally to and into the growing medium.

It is, therefore, the belief of the Applicant that the present invention as recited in claims 1, 11, 14 and 20 is fully and patentably distinguished over and from the teachings of Gidge '004 by this point alone. It is noted, however, that the Examiner has stated in the present

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Office Action that the "Applicant has not positively claimed the relative relationship of the water level in the reservoir to the soil level in the growing medium container." The Applicant respectfully disagrees on the grounds that the limitation found, for example, in claim 1 and in equivalent form in claims 11, 14 and 20, that "the least one lateral dispensing opening supporting a capillary member which controls flow of fluid from the reservoir to the at least one growing medium container, for providing moisture thereto to facilitate growing of a plant, the fluid flowing substantially horizontally and radially through the capillary member" defines the vertical relationship between the liquid and the growing medium container. That is, the liquid in the bottom region of the reservoir must be at a level above the bottom of the growing medium container in order to meet the limitation of "the fluid flowing substantially horizontally and radially through the capillary member" to the growing container.

In order to advance and expedite the allowance of the present Application and the claims thereof, however, the Applicant submits the amendments to claims 1, 11, 14 and 20 herein above that define the vertical position of the reservoir and the liquid level therein with respect to the vertical position of the growing medium containers and the growing medium therein. In this regard, it must be noted that it is clearly shown in the present Application that the reservoir is vertically positioned so that at least a part of the vertical extent of the reservoir and the liquid therein overlaps the vertical extent of the growing medium containers and so that the topmost level of the liquid in the reservoir will be above the tops of the growing medium containers while the bottom of the reservoir will be above the bottoms of the growing medium containers. As such, the above submitted amendments to claims 1, 11, 14 and 20 do not add any new matter to the present Application and do not extend or modify the subject matter or limitations of the claims as previously presented.

For the above reasons, therefore, it is the Applicant's belief and claims 1, 11, 14 and 20 are fully and patentably distinguished over and from the teachings of Gidge '004 under the requirements and provisions of both 35 U.S.C. § 102 and 35 U.S.C. § 103 and the Applicant

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accordingly respectfully requests that the Examiner reconsider and withdraw all rejections of claims 1, 11, 14 and 20 and the allowance of claims 1, 11, 14 and 20.

In addition, and because claims 2-6, 8-10, 12, 13, and 15-17 are dependent from claims 1, 11 and 14 and thereby incorporate all recitations and limitations of claims 1, 11 and 14 by dependence therefrom, it is the Applicant's belief and claims 2-6, 8-10, 12, 13, and 15-17 are fully and patentably distinguished over and from the teachings of Gidge '004 under the requirements and provisions of both 35 U.S.C. § 102 and 35 U.S.C. § 103 and the Applicant accordingly respectfully requests that the Examiner reconsider and withdraw all rejections of claims 2-6, 8-10, 12, 13, and 15-17 and the allowance of claims 2-6, 8-10, 12, 13, and 15-17.

Further considering the rejection of claims 1-6, 8-18 and 20 over Gidge '004 under 35 U.S.C. § 102, and considering in particular the reservoir overflow structures of Gidge '004 and of the present invention, in Gidge '004 the wall of each container 3 further includes a number of grooves 15 that extend vertically the entire height of the container 3 and that mate into the tops of the corresponding pockets 16 of a next lower container 3. At least some of the grooves 15 include a hole 14 that is an overflow hole for the reservoir contained in the lower part of the container 3. That is, when water is poured into the reservoir in the lower part of the container 3 the water level will rise to the level of the hole 14, whereupon the water will flow out of the hole 14 and down the side of the container 3 in the groove 15.

Gidge '004 states that the overflow water will flow down the groove 15 and into the "upper inner surface of pocket 16, from where it is deflected into the reservoir portion of the lower container 3". The Applicant questions the description by Gidge '004, however, for a number of reasons. For example, in Figs. 14-16 the bottom wall of the pockets 16 are indicated as either being flat or as slanting outwards, and there is not apparent feature by which overflow water could be deflected inwards to the reservoir in the lower part of the container 3.

In addition, the pockets 16 are shown as being occupied by the side containers 2, with both the pockets 16 and the inner part of the side containers 2 appearing to be recessed under what appears to be an overhanging lip or edge. It, therefore, appears that any water

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running down a groove 15 would dribble into a side container 2 rather than to the bottom of the pocket 16 to be guided into the reservoir.

Further in this regard, the only openings shown in the lower parts of the pockets 16, that is, the only apparent openings through which overflow water would appear to be able to flow into the reservoir, appear to be the openings through which the wicks pass to enter the side containers. As such, it is not clear how overflow water could flow from the bottoms of the pockets 16 and into the reservoir because the only apparent openings appear to be blocked by the wicks.

Despite the above considerations, however, and accepting the statements in Gidge '004 for purposes of discussion, it is still apparent that there are fundamental distinctions between the present invention as recited in claims 1, 11, 14 and 20 and the teachings of Gidge '004.

For example, in the present invention the overflow path for each reservoir, that is, the drainage channel 30 and drainage inlet 31 of each reservoir, is entirely contained within the circumference of the stackable unit and, in particular, is entirely contained within the circumference of the reservoir in the stackable unit. In complete contrast from the present invention, however, the drainage paths in the Gidge '004 units are entirely on the outsides of the containers, so that the overflow water is forced to dribble down the sides of the containers, possibly into the side containers and growth medium and possibly dripping onto the floor.

Therefore, and although it is the Applicant's belief that the present invention is fully distinguished over the teachings of Gidge '004 for the reasons discussed above with reference to the relative locations of the reservoirs and growth medium containers, the Applicant has submitted still further amendments to claims 1, 11, 14 and 20 in order to advance and expedite the allowance of the present Application and the claims thereof.

It will be noted that these amendments pertain to the location and structure of the overflow drainage paths and are fully supported by the specification and claims as previously submitted. As such, the above submitted amendments to claims 1, 11, 14 and 20 do not add

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any new matter to the present Application and do not extend or modify the subject matter or limitations of the claims as previously presented.

It is therefore the Applicant's belief and claims 1, 11, 14 and 20 are still further fully and patentably distinguished over and from the teachings of Gidge '004 under the requirements and provisions of both 35 U.S.C. § 102 and 35 U.S.C. § 103 and the Applicant accordingly respectfully requests that the Examiner reconsider and withdraw all rejections of claims 1, 11, 14 and 20 and the allowance of claims 1, 11, 14 and 20.

In addition, and because claims 2-6, 8-10, 12, 13, and 15-17 are dependent from claims 1, 11 and 14 and thereby incorporate all recitations and limitations of claims 1, 11 and 14 by dependence therefrom, it is the Applicant's belief and claims 2-6, 8-10, 12, 13, and 15-17 are fully and patentably distinguished over and from the teachings of Gidge '004 under the requirements and provisions of both 35 U.S.C. § 102 and 35 U.S.C. § 103 and the Applicant accordingly respectfully requests that the Examiner reconsider and withdraw all rejections of claims 2-6, 8-10, 12, 13, and 15-17 and the allowance of claims 2-6, 8-10, 12, 13, and 15-17.

Referring now to the rejection of claims 7 and 19 under 35 U.S.C. § 103(a) over Gidge '004, the Examiner states that Gidge '004 contains no teachings relevant to the recitations of claims 7 or 19, but that it would be obvious to experiment to arrive at the limitations recited in claims 7 and 19.

Accepting for purposes only of discussion the appropriateness of this grounds for rejection, the Applicant wishes to point out that claims 7 and 19 are dependent from claims 1 and 14 and thereby incorporate all recitations and limitations of claims 1 and 14 by dependence therefrom. It is, therefore, the Applicant's belief and claims 7 and 19 are fully and patentably distinguished over and from the teachings of Gidge '004 under the requirements and provisions of both 35 U.S.C. § 102 and 35 U.S.C. § 103 for all of the reasons discussed above, that is, by being dependent from allowable claims. The Applicant accordingly respectfully requests that the Examiner reconsider and withdraw all rejections of claims 7 and 19 and the allowance of claims 7 and 19.

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Lastly, the Examiner has objected to claim 10 on the grounds that claim 10 is ended by a semicolon rather than a period. In response, the Applicant has amended claim 10 by replacing the terminal semicolon with a period and respectfully requests that the Examiner reconsider and withdraw the objection to claim 10.

If any further amendment to this application is believed necessary to advance prosecution and place this case in allowable form, the Examiner is courteously solicited to contact the undersigned representative of the Applicant to discuss the same.

In view of the above amendments and remarks, it is respectfully submitted that all of the raised rejection(s) should be withdrawn at this time. If the Examiner disagrees with the Applicant's view concerning the withdrawal of the outstanding rejection(s) or applicability of the references, the Applicant respectfully requests the Examiner to indicate the specific passage or passages, or the drawing or drawings, which contain the necessary teaching, suggestion and/or disclosure required by case law. As such teaching, suggestion and/or disclosure is not present in the applied references, the raised rejection should be withdrawn at this time. Alternatively, if the Examiner is relying on his/her expertise in this field, the Applicant respectfully requests the Examiner to enter an affidavit substantiating the Examiner's position so that suitable contradictory evidence can be entered in this case by the Applicant.

In view of the foregoing, it is respectfully submitted that the raised rejection(s) should be withdrawn and this application is now placed in a condition for allowance. Action to that end, in the form of an early Notice of Allowance, is courteously solicited by the Applicant at this time.

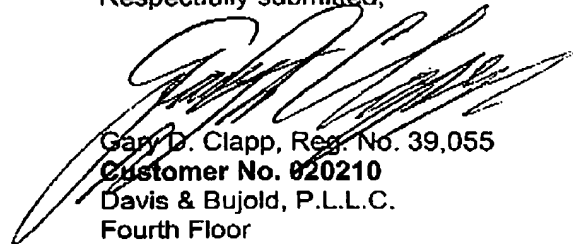
The Applicant respectfully requests that any outstanding objection(s) or requirement(s), as to the form of this application, be held in abeyance until allowable subject matter is indicated for this case.

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Respectfully submitted,



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